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Territorial cooperation in Europe:  
challenges and opportunities for the  
EU energy governance

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**Abstract:** Cooperation between European territorial authorities is a developing phenomenon which has reached a certain degree of harmonization through the instruments provided by the Council of Europe and the European Union. The Third Additional Protocol to the European Outline Convention concerning Euroregional Cooperation Groupings (ECGs), together with Regulation (EU) n. 1302/2013 amending Regulation (EC) n. 1082/2006 on European Groupings of Territorial Cooperation (EGTCs), provided new means to improve and institutionalize the governance of key sectors, such as the environment and energy, which require a combination of different and contrasting concerns as well as the involvement of all levels of government. The

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paper will explore the trends that characterize territorial cooperation in Europe, with particular regard to the means provided by the EU, and will point out their potential contribution in dealing with the main issues affecting current EU energy policy, especially as regards the European Commission's attempt to shape a resilient European Energy Union.

## **1. EU energy policy and law between the completion of the internal energy market and the need for a sustainable energy transition**

EU energy policy has deeply changed since the inception of the European integration process<sup>1</sup>. Although the completion of the internal energy market, in which each customer can freely choose his energy supplier, remains its main objective, such a general goal must now meet the need to preserve the environment and promote social development<sup>2</sup>.

To this regard, Art. 11 TFEU establishes the general principle whereby environmental protection requirements must be integrated into the definition and implementation of other EU policies, in particular with a view to promoting sustainable development<sup>3</sup>. Accordingly, Art. 194 TFEU, which now formalizes the EU shared competence in the energy sector, clearly states that EU energy policy, in full compliance with the need for environmental protection and in a spirit of solidarity between the Member States, is aimed at ensuring the functioning of the energy market and security of energy supply and promoting energy efficiency, energy saving and the

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<sup>1</sup> For a critical overview of EU energy law and policy see K. TALUS, *EU Energy Law and Policy. A Critical Account*, OUP, Oxford, 2013, pp. 287-295. See also V. L. BIRCHFIELD – J. S. DUFFIELD, *Conclusion. Taking Stock of EU Energy Policy: Problems, Progress and Prospects*, in V. L. BIRCHFIELD – J. S. DUFFIELD (eds.), *Toward a Common European Union Energy Policy. Problems, Progress and Prospects*, Palgrave Macmillan, New York, 2011, pp. 263-273.

<sup>2</sup> See M. MARLETTA, *Energia. Integrazione europea e cooperazione internazionale*, Giappichelli, Torino, 2011, pp. 25-32. For the most recent trends in EU energy law following the third energy package see B. DELVAUX – M. HUNT – K. TALUS, *EU Energy Law and Policy Issues*, Intersentia, Cambridge, 2012. For an account on EU energy law from the environmental perspective see F. MORATA – I. SOLORIO SANDOVAL (eds.), *European Energy Policy. An Environmental Approach*, Edward Elgar, Cheltenham, 2012.

<sup>3</sup> Defined at international level, the concept of sustainable development soon entered into and expanded within the EU legal system, where it has been widely recognized at Treaty level, in the EU secondary law and in several official acts and documents adopted by the Union. For an overview of the principle in the International law see K. BOSSELMANN, *Sustainable development in international environmental law*, in VV.A.A., *Routledge Handbook of International Environmental Law*, Routledge, Abingdon-New York, 2013, pp. 667-679. For the EU see N. DE SADELEER, *EU Environmental Law and the Internal Market*, OUP, Oxford, 2014, pp. 13-33; E. MORGERA, *European environmental law*, in VV.A.A., *Routledge Handbook of International Environmental Law*, cit., pp. 440-441.

development of new and renewable forms of energy as well as the interconnection of energy networks<sup>4</sup>.

The multiple and, to some extent, contradictory provisions laid down in Art 194 TFEU<sup>5</sup> well express how the EU has moved from an original market-based approach to a more comprehensive and complex policy in the field of energy<sup>6</sup>. This is confirmed by the climate targets established by the Union in order to fulfil its international commitments in reducing greenhouse gas emissions<sup>7</sup> and by the emergence of new issues, such as “energy poverty”, in the political debate.

Hence, far from being a sector-based issue, EU energy policy is rather a mean to contribute to a sustainable energy transition able to combine economic growth, environmental protection and social development<sup>8</sup>.

The complexity that characterizes the energy field further emerges if we look at the division of powers existing between the EU, its Member States and their regional and local authorities: according to Art. 4 TFEU, in fact, energy falls within the shared competences of the Union,

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<sup>4</sup> For an analysis of the impact of Art. 194 TFEU on European energy policy see L. HANCHER – F. M. SALERNO, *Energy Policy After Lisbon*, in A. BIONDI – P. EECKHOUT – S. RIPLEY, *EU Law After Lisbon*, OUP, Oxford, 2012, pp. 367-402; see also M. MARLETTA, *op. cit.*, pp. 59-62.

<sup>5</sup> For an in-depth analysis of the many provisions laid down by Art. 194 TFEU see B. DELVAUX, *EU Law and the Development of a Sustainable, Competitive and Secure Energy Policy. Opportunities and Shortcomings*, Intersentia, Cambridge-Antwerp-Portland, 2013, pp. 328-343.

<sup>6</sup> See S. L. PENTTINEN – K. TALUS, *Development of the sustainability aspects of EU energy policy*, in G. VAN CALSTER – W. VANDENBERGHE – L. REINS (eds.), *Research Handbook on Climate Change Mitigation Law*, Edward Elgar, Cheltenham-Northampton, 2015, pp. 34-35.

<sup>7</sup> Starting from the Commission Green Paper “A European Strategy for Sustainable, Competitive and Secure Energy” of 2006, the EU has highlighted its will in pursuing a sustainable energy transition. In the 2020 Climate and Energy Package of 2007, the EU fixed its climate and energy targets for 2020: 20% reduction in EU greenhouse gas emissions from 1990 levels; raising the share of EU energy consumption produced from renewable resources to 20%; 20% of improvement in the EU’s energy efficiency. Such a commitment is further increased by the “Energy Roadmap 2050” adopted by the Commission on 2011, which sets the EU ambitious target of reducing greenhouse gas emissions to 80-95% below 1990 levels by 2050. Finally, the 2030 framework for climate and energy policies agreed by EU leaders on 23 October 2014 provided for a domestic 2030 greenhouse gas reduction target of at least 40% compared to 1990 levels and, aiming at making the EU’s economy and energy system more competitive, secure and sustainable, set a target of at least 27% for renewable energy and energy savings by 2030. See B. DELVAUX, *op. cit.*, pp. 15-47.

<sup>8</sup> See C. ADELLE – D. RUSSEL – M. PALLEMAERTS, *A “coordinated” European energy policy? The integration of EU energy and climate change policies*, in F. MORATA – I. SOLORIO SANDOVAL (eds.), *European Energy Policy. An Environmental Approach*, *cit.*, pp. 25-45. For an overview of the EU legislation in the field of sustainable energy see B. DELVAUX, *op. cit.*, pp. 60-76; S. QUADRI, *Energia sostenibile. Diritto internazionale, dell’Unione europea e interno*, Giappichelli, Torino, 2012, pp. 82-93; M. P. IADICICCO, *Principio dello sviluppo sostenibile e politica energetica europea*, in L. CHIEFFI – F. PINTO (eds.), *Il Governo dell’energia dopo Fukushima. Indirizzi europei ed evoluzione delle politiche nazionali*, Editoriale Scientifica, Napoli, 2013, pp. 60-62.



while in domestic law it often requires the regulatory intervention of sub-state governments<sup>9</sup>. To this end, it is worth noting how the increasing intervention of the EU in the energy field is significantly reducing States' "energy sovereignty"<sup>10</sup>, while within Member States energy could represent a source of inter-institutional conflicts, since a multiplicity of regulations at regional or local scales often contrast with the need for a unitary legal framework<sup>11</sup>.

To this end, the case of renewable energy is emblematic: on the one hand, in fact, the mandatory targets introduced by Directive 2009/28/EC on the promotion of energy from renewable sources notably affect the right of MSs to determine the conditions for exploiting their energy resources, their choice between different energy sources and the general structure of their energy supply, thus raising concerns about the respect of the principles of subsidiarity and proportionality. On the other hand, renewable energy installations often cause concerns among local communities, due to their great territorial and social impact.

An efficient energy policy, therefore, requires flexible means by which all levels of government, from local to State, can cooperate in defining and implementing energy-related actions according to the general objectives defined at EU level<sup>12</sup>.

The Energy Union Package published by the European Commission on 25 February 2015<sup>13</sup>, which draws the path for the future shaping of the European Energy Union<sup>14</sup>, is clear enough on

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<sup>9</sup> For a compared analysis on the government of energy in some European States M. M. ROGGENKAMP – C. REDGWELL – I. DEL GUAYO – A. RØNNE (eds.), *Energy Law in Europe. National, EU and International Regulation*, OUP, Oxford, 2007; see also V. PEPE (ed.), *Diritto comparato dell'energia. Esperienze europee*, Edizioni Scientifiche Italiane, Napoli, 2008.

<sup>10</sup> See K. TALUS, *op. cit.*, p. 180; S. QUADRI, *op. cit.*, pp. 156-161.

<sup>11</sup> In Italy, for example, following the constitutional reform of 2001, the production, transport and distribution of energy is encompassed into the concurring legislation of the State and the Regions. This provision raised several controversies between the central and regional levels, especially in the field of renewable sources, albeit the Constitutional Court attempted to re-centralise on the State the most part of regulatory powers and administrative functions regarding the energy sector. See F. DI PORTO, *Energy Law in Italy*, Kluwer Law International, Alphen aan de Rijn, 2011, p. 54; B. CARAVITA, *Taking Constitution seriously. Federalismo e energia nel nuovo Titolo V della Costituzione*, in *federalismi.it*, 23 February 2003; G. CERRINA FERONI, *Contesto e prospettive delle energie rinnovabili in Italia: tra diritto e politica*, in *federalismi.it*, n. 13 of 2014, pp. 14-16; A. COLAVECCHIO, *L'Energia tra Stato e Regioni. Il caso del nucleare*, in L. CHIEFFI – F. PINTO, *Il Governo dell'energia dopo Fukushima. Indirizzi europei ed evoluzione delle politiche nazionali*, cit., pp. 127-131.

<sup>12</sup> See F. GUELLA, *Modelli di disciplina delle energie rinnovabili a livello sovrastatale*, in F. CORTESE – F. GUELLA – G. POSTAL (eds.), *La regolamentazione della produzione di energie rinnovabili nella prospettiva dello sviluppo sostenibile*, CEDAM, Padova, 2013, pp. 43-49; see also I. SOLORIO SANDOVAL – E. ZAPATER, *Redrawing the "green Europeanization" of energy policy*, in F. MORATA – I. SOLORIO SANDOVAL (eds.), *European Energy Policy. An Environmental Approach*, cit., pp. 98-111.

<sup>13</sup> The Energy Package consist of the following Communications: ["A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy" \[COM\(2015\) 80 final\]](#), which defines the objectives of the Energy Union and is integrated by a [Roadmap](#) laying down the measures to be taken and



that point: in the Commission’s Communication “A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy”, it is stated that the Energy Union “*needs an integrated governance and monitoring process, to make sure that energy-related actions at European, regional, national and local level all contribute to the Energy Union’s objectives*”. Furthermore, the Communication stresses that the governance process should serve, among other purposes, to “*bring together energy and climate actions as well as actions in other relevant policy areas, leading to more and longer-term policy coherence; secure implementation of the internal energy market and the delivery of the 2030 energy and climate framework, notably the implementation of the agreed 2030 targets on renewables, energy efficiency, non-Emissions Trading System and interconnections; streamline current planning and reporting requirements, avoiding unnecessary administrative burden; involve an energy dialogue with stakeholders to inform policy-making and support active engagement in managing the energy transition; deepen the cooperation between Member States, including at the regional level, and with the Commission*”.

Notwithstanding the important provisions laid down in the Communication – which will be examined in next paragraphs – one has to bear in mind that, more in general, for the EU institutions, the involvement of sub-State actors is fundamental in order to ensure effectiveness, coherence and complementarity of EU actions<sup>15</sup>.

## **2. The contribution of regional and local authorities to a sustainable energy transition**

It is well known how current global energy challenges, such as the fight against climate change and global warming, require the intervention of the International Community, since these issues cannot be dealt with at a mere national or regional level. The EU has so far played a leading role in reducing greenhouse gas emissions; nonetheless, without the commitment of other major developed and developing economies such as the US and China, such commitment is, in the end, of no use.

Alongside the international level, the contribution of local and regional authorities to a decarbonized energy transition is wide, especially regarding the promotion of renewable energy

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the relative timeframe; [“The Paris Protocol – A blueprint for tackling global climate change beyond 2020” \[COM\(2015\) 81 final\]](#), which defines the road to the global climate negotiations which will take place in Paris by the end of 2015; [“Achieving the 10% electricity interconnection target Making Europe’s electricity grid fit for 2020” \[COM\(2015\) 82 final\]](#) and its [annex](#).

<sup>14</sup> Following the publication of the Package by the Commission, the European Council drew the first steps towards the inception of the Energy Union in its Meeting of 19-20 March 2015: <http://www.consilium.europa.eu/en/press/press-releases/2015/03/20-conclusions-european-council>.

<sup>15</sup> As clearly stated in the [Commission’s White Paper on the European Governance \[COM \(2001\) 428 final\]](#) and in the [Committee of the Regions’ Charter for Multilevel Governance in Europe](#).



sources and energy efficiency. It is worth noting, to this respect, that roughly 80% of energy consumption and CO<sub>2</sub> emissions relate to urban activities and that the brunt of the consequences of climate change will be borne first of all by local communities<sup>16</sup>.

At the international level, the importance of local and regional authorities has been primarily recognized by the Stockholm Declaration of 1972<sup>17</sup> and the Rio Summit of 1992<sup>18</sup>. Such acknowledgement emerges also in other specific instruments, like the Aalborg Charter of 1994 (Charter of European Cities and Towns Towards Sustainability) and the Leipzig Charter on Sustainable European Cities of 2007. A further example is offered by the European Landscape Convention of 2000<sup>19</sup>, an international agreement adopted under the auspices of the Council of Europe aimed at encouraging public authorities to adopt policies and measures at local, regional, national and international level for protecting, managing and planning European landscapes<sup>20</sup>.

Moving from the international to the EU level, sub-state contribution to the fight against climate change has been outlined at least starting from the EU Environment Action Programmes and is widely recognized in EU legislation and official documentation dealing with environmental issues<sup>21</sup>. Most recently, such acknowledgment has been further stressed in the Energy Union Package of February 2015, in which many are the references to local and regional levels and, as referred to earlier, to multi-level governance. To this regard, it is worth outlining the proactive role assumed by sub-state governments in the field of climate change and sustainable energy:

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<sup>16</sup> The Committee of the Regions dedicated several studies to the contribution of local and regional governments to the fight to climate change: see EUROPEAN UNION – COMMITTEE OF THE REGIONS, *Climate change adaptation: Empowerment of local and regional authorities, with a focus on their involvement in monitoring and policy design*, 2013; *Low Carbon Energy 2050 – Local and Regional Impact and Perspectives*, 2011; *Local and regional issues in global climate change negotiations, within the UNFCCC process with a particular focus on COP 16*, 2011; *Adaptation to Climate Change*, 2011; *The involvement of EU regions and cities in the implementation of the renewed Lisbon Strategy for Growth and Jobs in 2008: Climate change and Energy*, 2009; *The use of renewable energy sources and measures to boost energy efficiency – significant contributions at local and regional level to combating climate change*, 2008. The studies are available at the following link: <http://cor.europa.eu/en/documentation/studies/Pages/studies.aspx>.

<sup>17</sup> Art. 7 of the Stockholm Declaration, for example, states that “local and national governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions”.

<sup>18</sup> In Agenda 21, article 28 specifically deals with “Local Authorities in support of Agenda 21”.

<sup>19</sup> European Landscape Convention, Treaty opened for signature in Florence the 20<sup>th</sup> of October 2000, entered into force the 1<sup>st</sup> of March 2004 and binding for 38 States of the CoE (update of the data: 22 June 2015): <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=176&CL=ENG>.

<sup>20</sup> For all these examples see F. DE LEONARDIS, *Politiche e poteri dei governi locali nella tutela dell'ambiente*, in G. F. CARTEI (ed.), *Cambiamento climatico e sviluppo sostenibile*, Giappichelli, Torino, 2013, pp. 89-94.

<sup>21</sup> See, for example, point n. 86 of the 7<sup>th</sup> Environment Action Programme to 2020 “Living well, within the limits of our planet”, annexed to Decision n. 1386/2013/EU of the European Parliament and of the Council of 20 November 2013, which recognizes that “local and regional authorities [...] have a particularly important role to play in assessing environmental impacts and protecting, conserving and enhancing natural capital, thus also achieving greater resilience to the impact of climate change and to natural disaster”.



Suffice here to compare the climate and energy goals proposed in October 2014 by the Committee of the Regions for the period from 2020 to 2030 (50% reduction in greenhouse gas emissions compared with 1990; 40% share of renewable energies; 40% reduction in primary energy consumption compared with 2005 achieved through efficiency gains)<sup>22</sup> with the 2030 framework for climate and energy policies agreed by the EU leaders in October 2014 (respectively 40%, 27% and 30% targets).

However, being aware of the need to involve local and regional authorities in moving towards a sustainable energy transition, the EU has thus promoted initiatives in this direction. The most interesting example is doubtless the Covenant of Mayors, a “movement” launched by the European Commission to involve regional and local authorities in voluntarily committing to increase energy efficiency and the use of renewable energy sources in order to meet the EU 20% CO<sub>2</sub> reduction objective by 2020. The Covenant includes more than 6.000 signatories which are committed to define and implement Sustainable Energy Action Plans and, according to the European institutions, represents an outstanding example of multi-level governance in the energy field<sup>23</sup>. It is worthwhile to mention also the “Mayors Adapt”, an initiative of the Covenant of Mayors by which participating cities commit to contributing to the EU Adaptation Strategy by developing a local adaptation strategy or integrating adaptation to climate change into other existing plans. The initiative is aimed at increasing support for local activities, providing a network platform for cities, and raising public awareness about climate adaptation. So far, 120 cities from 19 EU Member States as well as from EFTA and candidate countries (Iceland and Turkey) have signed the initiative, and their number is likely to increase day by day<sup>24</sup>.

Beyond these specific instruments, other means to involve sub-state authorities in the governance of energy can be found in EU law. To this end, territorial cooperation models are of great interest, since they allow to deal with trans-boundary issues (such as energy, environment and trans-European networks) according to a multilevel governance approach<sup>25</sup>, and as far as they have been already used to deal with energy issues. An example is offered by the Alpine Convention, an international treaty signed in 1991 by Austria, France, Germany, Italy, Liechtenstein, Monaco, Slovenia, Switzerland and the EU, aimed at promoting sustainable

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<sup>22</sup> See the Opinion of the Committee of the Regions “A policy framework for climate and energy in the period from 2020 to 2030” available at: <http://cor.europa.eu/en/activities/opinions/pages/opinion-factsheet.aspx?OpinionNumber=CDR%202691/2014>.

<sup>23</sup> [http://www.covenantofmayors.eu/index\\_en.html](http://www.covenantofmayors.eu/index_en.html).

<sup>24</sup> <http://mayors-adapt.eu/>.

<sup>25</sup> See F. DE LEONARDIS, *op. cit.*, pp. 95-96;





development in the Alpine area, which was enriched in 1998 by an energy protocol envisaging specific measures regarding the energy sector<sup>26</sup>.

The following paragraphs will describe the most recent instruments on territorial cooperation provided by the EU, with particular attention to the opportunities and challenges they offer for energy governance. Before examining the EU context, a brief overview of the Council of Europe's activity in the field is necessary, as it provided for interesting solutions which are now complementary to those of the EU.

### **3. The Council of Europe's *acquis* on territorial cooperation: from the Madrid convention on trans-frontier cooperation to its Third Additional Protocol on Euroregional Cooperation Groupings (ECGs)**

During the last sixty years Europe has experienced an unprecedented process of territorial transformation<sup>27</sup>: the European integration process, in fact, has changed the role and meaning of borders, thus fostering the emergence of forms of collaboration between local and regional authorities beyond State borders in order to deal with local issues<sup>28</sup>. In this sense, in Europe<sup>29</sup>, the locution “trans-European cooperation” has been proposed to describe all the international cooperation activities involving European local and regional authorities<sup>30</sup>, while the term “Euroregion” has been used in relation to the institutional structures formalizing these activities, although with a degree of uncertainty and terminological confusion<sup>31</sup>.

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<sup>26</sup> See S. QUADRI, *op. cit.*, pp. 33-43; M. ONIDA, *Particolarità dell'ambiente alpino e cooperazione transfrontaliera: il caso della Convenzione delle Alpi*, in F. CORTESE – F. GUELLA – G. POSTAL (eds.), *La regolamentazione della produzione di energie rinnovabili nella prospettiva dello sviluppo sostenibile*, cit., pp. 185-197.

<sup>27</sup> See M. KEATING, *Territorial restructuring and European integration*, in M. KEATING – J. HUGES (eds.), *The regional challenge in central and eastern Europe. Territorial restructuring and European integration*, P.I.E-Peter Lang, Bruxelles, 2003, p. 9; M. C. SMOUTS, *The region as the new imagined community?*, in P. LE GALES – C. LEQUESNE (eds.), *Regions in Europe*, Routledge, London-New York, 1998, p. 37.

<sup>28</sup> See M. PERKMANN, – N. SUM, *Globalization, Regionalization and Cross-Border Regions: Scales, Discourses and Governance*, in M. PERKMANN – N. SUM (eds.), *Globalization, Regionalization and Cross-Border Regions*, Palgrave Macmillan, Houndmills-New York, 2002, pp. 3-6; J. LERESCE – G. SAEZ, *Political Frontier Regimes: Towards Cross-Border Governance?*, in M. PERKMANN – N. SUM (eds.), *Globalization, Regionalization and Cross-Border Regions*, cit., pp. 77-96.

<sup>29</sup> On the development of cross-border cooperation in Europe, America, Asia and Africa see M. PERKMANN – N. SUM (eds.), *Globalization, Regionalization and Cross-Border Regions*, cit. On the differences of cross-border cooperation in Europe and North America see E. BRUNET-JAILLY, *A Review of Cross-Border Cooperation in North America*, in L. DOMINGUES – I. PIRES (eds.), *Cross-Border Cooperation Structures in Europe: Learning from the Past, Looking to the Future*, Peter Lang, Bruxelles, 2014, pp. 49-66.

<sup>30</sup> See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *Trans-European Cooperation between Territorial Authorities*, Office for Official Publications of the European Communities, Luxembourg, 2002, p. 31.

<sup>31</sup> On Euroregions see EUROPEAN UNION – COMMITTEE OF THE REGIONS, *op. cit.*, pp. 73-90; M. PERKMANN, *The rise of the Euroregion. A bird's eye perspective on European cross-border co-operation*, University of



The CoE was the first organization which attempted to provide for an harmonizing *acquis* on territorial cooperation. Through the Madrid Outline Convention of 1980 on Trans-frontier Cooperation<sup>32</sup>, its Additional Protocols<sup>33</sup>, the European Charter of Local Self-Government of 1985<sup>34</sup> and its Additional Protocol<sup>35</sup>, in fact, local and regional authorities have been entrusted with the right to conduct activities with foreign homologous and to formalize such cooperation through the creation of permanent structures<sup>36</sup>.

Nonetheless, such an attempt has been prevented by several factors: the wide freedom accorded to States regarding the concrete implementation of the above-mentioned conventions; the many references to States' internal law; the different degree of State acceptance of such international instruments (only a minority of CoE Member States have ratified the Additional Protocols and

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Lancaster-Department of Sociology, 2002, and *Euroregions: Institutional Entrepreneurship in the European Union*, in M. PERKMANN – N. SUM (eds.), *Globalization, Regionalization and Cross-Border Regions*, cit., pp.103-122; M. MEDEIROS, *(Re)defining the euroregion concept*, in *European Planning Studies*, Vol. 19, n. 1, 2011.

<sup>32</sup> European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, treaty opened to signature in Madrid the 21th of June 1980, entered into force the 22th of December 1981 and binding for 38 Member States (update of the data: 22 June 2015): <http://conventions.coe.int/Treaty/en/Treaties/Html/106.htm>.

<sup>33</sup> Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, opened to signature in Strasbourg the 9<sup>th</sup> of November 1995, entered into force the 1<sup>th</sup> of December 1998 and binding for 24 States: <http://conventions.coe.int/Treaty/en/Treaties/Html/159.htm>. Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation, opened to signature in Strasbourg the 5<sup>th</sup> of May 1998, entered into force the 1<sup>th</sup> of February 2001 and binding for 23 States: <http://conventions.coe.int/Treaty/en/Treaties/Html/169.htm>. Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs), opened to signature in Utrecht the 16<sup>th</sup> of November 2009, entered into force the 1<sup>th</sup> of March 2013 and binding for 6 States: <http://conventions.coe.int/Treaty/en/Treaties/Html/206.htm>.

<sup>34</sup> European Charter of Local Self-Government, treaty opened to signature in Strasbourg the 15<sup>th</sup> of October 1985, entered into force the 1<sup>th</sup> of September 1988 and binding for all Member States of the CoE: <http://conventions.coe.int/Treaty/en/Treaties/Html/122.htm>.

<sup>35</sup> Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, opened to signature in Utrecht the 16<sup>th</sup> of November 2009, entered into force the 1<sup>th</sup> of June 2012 and binding for 11 Member States: <http://conventions.coe.int/Treaty/en/Treaties/Html/207.htm>.

<sup>36</sup> On the Madrid Outline Convention and its additional protocols see N. LEVRAT, *Le droit applicable aux accords de coopération transfrontière entre collectivités publiques infra-étatiques*, P.U. France, Paris, 1994; EUROPEAN UNION – COMMITTEE OF THE REGIONS, *The European Grouping of Territorial Cooperation – EGTC*, Office for Official Publications of the European Communities, Luxembourg, 2007, pp. 27-37; C. RICQ, *Handbook of Transfrontier Co-operation*, Council of Europe, 2006, pp. 49-55; M. VELLANO, *La cooperazione regionale nell'Unione europea*, Torino, Giappichelli, pp. 40-65.



some others have yet not ratified even the Madrid Convention); and the differences that could arise from internal implementation<sup>37</sup>.

In order to overcome these problems and to make its legal framework fully compatible with the legislation meanwhile adopted by the EU on the same matter (Regulation 1082/2006 on European Groupings of Territorial Cooperation), the CoE provided for a new mean on territorial cooperation through a third additional protocol to the Madrid Convention: the Euroregional Cooperation Groupings (ECGs).

Entered into force the 1<sup>st</sup> of March 2013 and binding for 6 Member States of the CoE<sup>38</sup>, the Protocol regulates the formation and functioning of ECGs in the Member States of the CoE which are Parties to it, in order to promote territorial cooperation between their constituent members.

Pursuant to the protocol, ECGs are transfrontier bodies provided with legal personality and governed by the law of the Party in which they have their headquarters.

They could be formed by: territorial communities or authorities of a Party; States Parties to the Convention (if one or more of their territorial communities or authorities are members); legal persons established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, provided that their activity is mainly financed by public authorities, their management is subject to the control of these entities, or half the members of their administrative, managerial or supervisory organ are appointed by public authorities; and territorial communities or authorities of a State non-Party to the protocol which shares a border with a Party that is or will become the State in which a Grouping has its headquarters, where an agreement between these two States so allows.

The complex procedure for the establishment of an ECG foresees many fulfilments: in particular, before joining an ECG, territorial communities or authorities shall inform, notify or obtain authorization from their competent national authorities regarding this intention. Authorization may be refused, with duly motivation, due to violation of the Protocol or of national law, as well as for reasons of public interest or of public policy.

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<sup>37</sup> See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *The European Grouping of Territorial Cooperation – EGTC*, cit., pp. 34-37; D. STRAZZARI, *Harmonizing Trends vs domestic regulatory frameworks: looking for the European law on cross-border cooperation*, in *European Journal of Legal Studies*, Vol. 4, n. 1, 2011, pp. 157-161.

<sup>38</sup> The state of ratifications/accessions is available at the following link: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=206&CM=8&DF=07/03/2015&CL=ENG>. Last accessed on 22 June 2015.



The functioning of ECGs is based on statutes, which are an integral part of the agreement establishing the Grouping.

Regarding the scope of their action, ECGs can perform the tasks, listed in the agreement and in the statutes, that their members entrust to them, in accordance with the competences of the members under their respective national law. They can adopt decisions and ensure their implementation, in respect and for the benefit of individual persons or legal entities subject to the jurisdiction of the States to which their members belong, whereas members shall ensure that ECG' decisions are implemented. Tasks cannot encompass the exercise of regulatory powers and ECGs cannot be empowered to take measures which might affect the rights and freedoms of individuals, or to impose levies of a fiscal nature. Moreover, in order to avoid a “sub-delegation” of competences without the consent of the original authority, members cannot delegate to ECGs the implementation of central authority competences, except where duly authorized, but they can exercise the competences that States members of the ECG confer upon them.

Finally, States can designate the categories of territorial communities or authorities and legal persons to be excluded from the scope of the protocol.

The Third Additional Protocol marked a fundamental step towards the institutionalization and harmonization of territorial cooperation in Europe. In fact, it provides for State involvement in trans-European cooperation activities, and as we will see later, it presents many similarities with EU legislation on European Groupings of Territorial Cooperation: indeed, the drafting of the Third Protocol was reoriented in order to make its provisions fully compatible with Regulation 1082/2006<sup>39</sup>. Nonetheless, one has to bear in mind that, alike previous protocols, its implementation relies on State commitment in ratifying it (Member States of the CoE can be Parties to the Protocol as long as they are Parties to the Madrid Convention) and on its internal transposition<sup>40</sup>. Moreover, the development of the ECGs will depend on the evolution of the EU legislation regarding the EGTCs, especially following the amendments introduced by Regulation 1302/2013: EU Regulations have in fact binding legal force throughout all Member State, unlike the international instruments provided by the CoE<sup>41</sup>.

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<sup>39</sup> See D. STRAZZARI, *op. cit.*, p. 171.

<sup>40</sup> See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *The European Grouping of Territorial Cooperation – EGTC*, *cit.*, pp. 35-37; M. VELLANO, *op. cit.*, pp. 76-80.

<sup>41</sup> See M. VELLANO, *op. cit.*, pp. 56-61.



#### 4. The EU: from the cohesion policy to the EGTCs

Alongside the activity carried out by the CoE, also the EU has encouraged the cooperation between regional and local authorities<sup>42</sup>. Given the original lack of a specific Community competence in the field and despite the scarce provisions contained in the original Treaties<sup>43</sup>, through the structural funds the EU financed many territorial programmes, which were geographically enlarged and extended to its external borders<sup>44</sup>. Territorial cooperation was therefore promoted within the EU regional policy.

The EU also provided for legal instruments to formalize cross-border relations between both private and public actors. An example is offered by the European Economic Interest Grouping (EEIG) introduced by Regulation (CE) n. 2137/1985, a figure aimed at favouring the economic cooperation between professionals belonging to different Member States<sup>45</sup>.

Such initiatives, however, were hindered by several factors, the most relevant of which being the lack of funding and the concurrence of different legal systems<sup>46</sup>. Following the subsequent EU

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<sup>42</sup> For the relationship between the European integration process and cross-border cooperation see L. DOMÍNGUEZ – I. PIRES, *EU Cross-Border Cooperation. Historical Balance and Future Perspectives*, in L. DOMÍNGUEZ – I. PIRES (eds.), *Cross-Border Cooperation Structures in Europe: Learning from the Past, Looking to the Future*, cit., pp. 23-48; see also B. WASSENBERG, *The Place of Cross-Border Cooperation in International Relations*, in L. DOMÍNGUEZ – I. PIRES (eds.), *Cross-Border Cooperation Structures in Europe: Learning from the Past, Looking to the Future*, cit., pp. 67-80.

<sup>43</sup> The Treaty of Rome establishing the European Economic Community and its subsequent amendments didn't foresee dispositions on territorial cooperation, the latter being therefore regulated by Community secondary law. The Treaty of Amsterdam partially modified the Title on the economic and social cohesion, specifying the advisory role of the Committee of the Regions on matters relating to cross-border cooperation. Following the Treaty of Lisbon, the economic and social cohesion policy acquired a new "territorial" dimension, thus becoming the economic, social and territorial cohesion policy: Art. 3 TEU states that the Union "[...] shall promote the economic, social and territorial cohesion, and solidarity among Member States", while new Title XVIII of the TFEU on economic, social and territorial cohesion states in Art. 174 that "in order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between levels of development of the various regions and the backwardness of the least favoured regions [...]".

<sup>44</sup> A typical example is the Interreg programme, which was launched by the European Commission in 1990 (Interreg I) and reconfirmed again and again (Interreg II e III). After being replaced by the European Territorial Co-operation objective provided by the 2007-2013 funding programming period, in current programming period (2014-2020) it is contained in Regulation (EU) n. 1299/2013 of the European Parliament and of the Council of 17 December 2013.

<sup>45</sup> According to Regulation (EEC) n. 2137/85 on the European Economic Interest Grouping (EEIG), adopted by the Council on 25 July 1985, EEIGs don't have necessarily legal status, even if they do have legal capacity. As article 4 clearly states, the Groupings could be composed by natural persons and public or private companies or firms exercising activities of different kind. See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *The European Grouping of Territorial Cooperation – EGTC*, cit., pp. 41-42.

<sup>46</sup> On the limits which affected territorial cooperation in Europe see the Report on the role of "Euroregions" in the development of regional policy of the European Parliament (2004/2257(INI)): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2005-0311+0+DOC+PDF+V0//EN>.



enlargements, which increased the structural gap between the European regions, the EU thus provided for a common figure on territorial cooperation: the European Grouping of Territorial Cooperation (EGTC), introduced by Regulation (EC) 1082/2006<sup>47</sup>.

Adopted on the basis of Art. 159 TEC (current Art. 175 TFEU) and included into the legislative package on cohesion policy for the period 2007-2013, Regulation 1082/2006 entered into force in August 2007 and was partially amended by Regulation 1302/2013<sup>48</sup>.

Limiting our analysis to the main features of Regulation 1082/2006, we can observe that EGTCs, similarly to ECGs, basically consist in transnational structures made up by members belonging to at least two EU Member States<sup>49</sup> and are oriented to facilitate territorial cooperation in order to improve economic, social and territorial cohesion<sup>50</sup>.

They compulsorily have legal personality and exercise in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law.

EGTCs are based on statutes and conventions, have unique headquarters, are endowed with at least two organs (an Assembly made up of representatives of their members and a Director who represents the EGTCs and acts on their behalf) and establish an annual budget.

For their establishment, the Regulation foresees a multi-step procedure: the initiative is entrusted to their prospective members, which notify their respective Member States their intention to take part to a Grouping. Member States can deny the participation under limited conditions, in particular when contrasting with Regulation 1082/2006 or national law or for reasons of public interest or of public policy. After having obtained State's approval, prospective members approve the convention and the statute<sup>51</sup>. Finally, the procedure concludes with the acquisition of the legal personality and the publication in the Official Journal of the EU.

States may prohibit EGTCs' activities in their territory if they contrast with public interest: in this case members of an EGTC can be asked by their respective State to withdraw from a Grouping unless the activity in question ceases. Nevertheless, such prohibitions cannot constitute a mean to arbitrary or indirect restrictions of EGTC's activities.

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<sup>47</sup> <http://cor.europa.eu/en/activities/networks/Documents/EN.pdf>.

<sup>48</sup> For a complete analysis of the legal framework on EGTCs before the amendments introduced by Regulation 1302/2013 see EUROPEAN UNION – COMMITTEE OF THE REGIONS, *The European Grouping of Territorial Cooperation – EGTC*, cit. pp. 66-150.

<sup>49</sup> As we will see, Regulation 1302/2013 foresees the possibility of a Grouping composed by members belonging to only one Member State (see paragraph n. 4.1.).

<sup>50</sup> Following the Treaty of Lisbon, which added a territorial dimension to the cohesion policy, Regulation 1302/2013 introduced a reference to territorial cohesion in Regulation 1082/2006.

<sup>51</sup> Reference to the statute has been omitted by Regulation 1302/2013.



Beside these common features, EGCTs may differ regarding some aspects. Firstly, with respect to their composition, EGCTs can be formed by Member States<sup>52</sup>, regional and local authorities and bodies governed by public law (within the meaning of Directive 2004/18/EC and its amendments). Moreover, according to Recital n. 16 of Regulation 1082/2006, “*the adoption of a Community measure allowing the creation of an EGCT should not [...] exclude the possibility of entities from third countries participating in an EGCT [...] where the legislation of a third country or agreements between Member States and third countries so allows*”<sup>53</sup>.

Secondly, differences may arise regarding the sources that govern the functioning of the EGCTs, namely Regulation 1082/2006, the conventions and the statutes adopted by their composing members and the law of the Member State where they have their registered office.

Finally, EGCTs may vary according to their functions: they act within the tasks given to them, to facilitate and promote territorial cooperation in order to strengthen EU economic, social and territorial cohesion, in accordance with the competences exercised by their constituent members under their respective national law. In this sense, the tasks of an EGTC are primarily oriented to the implementation of territorial cooperation programmes or projects co-financed by the EU through the European Regional Development Fund, the European Social Fund and the Cohesion Fund. EGTCs may also carry out specific actions of territorial cooperation with or without the financial contribution from the Union. In the latter case, States may limit the tasks purported by the EGTCs. More in general, the tasks given to EGTCs by their members shall not concern the exercise of powers conferred by public law or of duties whose object is to safeguard the general interests of the State or of other public authorities, such as police and regulatory powers, justice and foreign policy.

The introduction of EGTCs has opened up interesting opportunities for the institutionalization of trans-European cooperation, especially considering the possibility for States to take part to a Grouping, their mandatory legal personality and, more in general, the direct applicability of Regulation 1082/2006 (and its amendments) within the Member States<sup>54</sup>. Regarding the latter aspect, it is worth noting that for many sub-state authorities, EGTCs represent the only one

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<sup>52</sup> It is worth noting that State participation marks a fundamental change in the field of territorial cooperation: before the third additional protocol to the Madrid Convention, in the CoE legal framework State participation was excluded.

<sup>53</sup> As we will see, subjects that can take part to a Grouping have been expanded by Regulation 1302/2013, especially with regard to *extra* European entities.

<sup>54</sup> See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *The European Grouping of Territorial Cooperation – EGTC*, cit., p. 138.



opportunity to freely take part to a trans-European body, as many EU States, although being Members of the CoE, have not yet ratified the Additional Protocols to the Madrid Convention<sup>55</sup>. By the end of 2014, 50 Groupings were constituted, including more than 800 territorial authorities belonging to 20 Member States, and 16 Groupings were in the making<sup>56</sup>. According to the monitoring on the development of the EGTCs periodically published by the Committee of the Regions<sup>57</sup>, existing Groupings are mostly placed in Central Europe and are aimed at creating an institutional framework for existing projects and programmes, although recent trends highlight an increasing activism of the Eastern European territories. Mostly, Groupings have a local range, although examples of regional-local cooperation and multi-level partnerships including also the national level can be observed as well<sup>58</sup>.

Regarding the field of activity, practice shows that EGTCs have not one-clear cut operational target, but rather pursue activities in various fields, thus highlighting how territorial cooperation could be used for long-term projects integrating different interests and issues. In general, activities regard transport and infrastructures, entrepreneurship, tourism, rural development, start-up and strategic development as well as environment and energy.

Despite these figures, EGTCs did not solve the traditional problems affecting territorial cooperation, in particular the overlap of many national legal systems. As outlined before, Regulation 1082/2006 grants to States relevant margins of discretion in limiting the participation of their territorial authorities to an EGTC for reasons of “public interest”.

In order to clarify and simplify many aspects of the EGTC legislation, the EU thus adopted Regulation 1302/2013 amending Regulation 1082/2006, by which new and interesting provisions were introduced.

#### **4.1. Regulation (EU) n. 1302/2013**

Following the new planning of the structural funds, the legislative package on cohesion policy for 2014-2020 included Regulation (EU) 1302/2013 of the European Parliament and of the Council of 17 December 2013, which amended Regulation 1082/2006 and applied from 22 June 2014<sup>59</sup>.

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<sup>55</sup> See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *The European Grouping of Territorial Cooperation – EGTC*, cit., p. 138.

<sup>56</sup> See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *EGTC Monitoring Report 2014. Implementing the Strategy Europe 20120*, Luxembourg, 2015, p. 1.

<sup>57</sup> See the monitoring reports of the Committee of the Regions of 2014, 2013, 2012, 2011, 2009 and 2007 available at the following link: <http://cor.europa.eu/en/documentation/studies/Pages/studies.aspx>.

<sup>58</sup> See paragraph 6.

<sup>59</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1302&from=EN>.





The new Regulation aims at clarifying, simplifying and improving the establishment and functioning of EGTCs<sup>60</sup>. In addition to the terminological modifications imposed by the Treaty of Lisbon (which added a territorial dimension to cohesion policy and replaced the term “Community” with that of “Union”), the new legislation foresees many innovations on EGTCs. Regarding its main provisions, the Regulation firstly clarifies the sources governing the Groupings: in new Art. 2 of Regulation 1082/2006, regarding the applicable law, reference to the statutes is omitted, in order to better distinguish between the convention (laying down the constitutive elements of the EGTCs), and the statutes (setting out their implementation elements).

Secondly, the Regulation enlarges the categories of subjects that can be part to a Grouping: apart from Member States, regional and local authorities and bodies governed by public law, other private and public law actors have now the possibility to become members, notably the authorities at national level, “public undertakings” (as defined in Directive 2004/17/EC of the European Parliament and of the Council) and undertakings entrusted with operation of services of general economic interest.

Thirdly, amendments are introduced regarding the procedure to establish and modify the Groupings, the most remarkable of which being the duty for the Member States to motivate the denial to their prospective members to participate to a Grouping and the introduction of the tacit approval during the establishment of an EGTC: if the Member State which has been notified does not raise objections within a period of six months, the participation of the prospective member and the convention are deemed to be approved.

Fourthly, in addition to the provisions regarding the regime of publicity and the contents of the statutes governing the Groupings, their responsibility and tasks are further enhanced: apart from promoting territorial cooperation to strengthen EU economic, social and territorial cohesion<sup>61</sup>, Groupings are aimed at overcoming the internal market barriers<sup>62</sup>. To this end, EGCTs still act

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<sup>60</sup> On the amendments introduced by Regulation 1302/2013 see EUROPEAN UNION – COMMITTEE OF THE REGIONS, *EGTC Monitoring Report 2013. Towards the New Cohesion Policy*, Luxembourg, 2014, pp.127-130. See also S. P. ISAZA QUERINI, *Tendenze della cooperazione territoriale in Europa e in Italia alla luce del terzo protocollo addizionale alla Convenzione di Madrid e del regolamento (UE) n. 1302/2013*, in *federalismi.it*, n. 18 of 2014, pp. 22-24.

<sup>61</sup> In the original formulation of Regulation 1082/2006, the tasks of an EGTC were limited to the facilitation and promotion of territorial cooperation to strengthen economic and social cohesion and were primarily oriented to the implementation of territorial cooperation programmes or projects co-financed by the Community (see Art. 7 before the amendments introduced by Regulation 1302/2006).

<sup>62</sup> See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *The European Groupings of Territorial Cooperation and the Single Market*, Office for Official Publications of the European Union, Luxembourg, 2014.



within the tasks given to them, in accordance with the competences exercised by their constituent members under the applicable national law and unless a Member State (or the third country) approves the participation of a member established under its national law even in the case that the member is not competent for all the tasks specified in the convention.

Finally, the most relevant amendments are those clarifying the participation of members from third countries or overseas countries or territories (OCTs). Groupings can be made up of members located on the territory of at least two EU Member States and of one or more third countries neighbouring at least one of those EU Member States, under the condition that those States jointly carry out territorial cooperation actions or implement programmes supported by the EU. Under the same conditions, Groupings may also be made up of members located on the territory of at least two Member States and of one or more OCTs, with or without members from one or more third countries. In addition, they may consist of members located on the territory of only one Member State and of one or more third countries neighbouring that Member State, only if the Member State concerned considers that EGTC to be consistent with the scope of its territorial cooperation in the context of territorial cooperation or bilateral relations with the third countries concerned. Similarly, they can be made up of members located on the territory of only one Member State and of one or more OCTs, with or without members from one or more third countries, notwithstanding that EGTCs cannot be set up only between members from a Member State and one or more OCTs linked to that Member State.

In this sense, the possibility for creating an EGTC joined by members belonging to only one Member State represents a relevant innovation if compared with the previous regulation, according to which EGTCs should be made up by members located on the territory of at least two Member States (see the previous formulation of Art. 3, par. 2, of Regulation 1082/2006).

## **5. ECGs and EGTCs: towards the harmonization of territorial cooperation in Europe?**

In spite of the differences existing between ECGs and EGTCs, basically arising from the differing nature of the legal systems within which they are regulated, many are the features they share, especially after the adoption of Regulation 1302/2013<sup>63</sup>.

Both the Third Protocol and the two EU Regulations seek to formalize territorial cooperation by well-defined structures, granting at the same time a certain degree of flexibility and spontaneity in

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<sup>63</sup> For an early attempt to compare the two figures see A. ENGL, *Future Perspectives on Territorial Cooperation in Europe: The EC Regulation on a European Grouping of Territorial Cooperation and the Planned Council of Europe Third Protocol to the Madrid Outline Convention concerning Euroregional Co-operation Groupings*, in *European Diversity and Autonomy Papers*, n. 3 of 2007. See also S. P. ISAZA QUERINI, *op. cit.*, pp. 24-27.



favour of their constituent members. Both Groupings are oriented to strengthen territorial cooperation, although EGTCs are naturally focused to the improvement of the EU economic, social and territorial cohesion<sup>64</sup>.

Both instruments are provided with legal personality, thus enjoying a certain degree of autonomy. Differences can be found regarding the sources governing their functioning, although they could be justified, as said, regarding the different legal systems within which the two figures find their regulation.

Regarding the procedure for their establishment, in both cases prospective members have to communicate the intention to take part to a Grouping to the competent national authority, while the latter can motivate its denial due to contrast with the Protocol (or the Regulation) and with national law as well as for reasons of “public interest”. Furthermore, States may exclude specific categories of entities from participating to a Grouping (as stated by the Protocol) or in case of activities contrasting with the national “public interest” (see Regulation 1082/2006 as amended by Regulation 1302/2013).

As regards the composition, on the one hand the number and type of actors that are foreseen for an EGTC have been enlarged by Regulation 1302/2013; on the other hand, in spite of the provisions of the Third Protocol envisaging a wider category of private actors, a “public” composition remains predominant as far as Art. 3 (pars. 1 and 3) states that legal persons which pursue goals of general interest and have not an industrial or commercial purpose are entitled to take part to a Grouping as long as their activity is publicly controlled and notwithstanding that territorial communities or authorities retain the majority of the voting rights within the Grouping. Also regarding the participation of members from third countries, differences have been reduced following the adoption of Regulation 1302/2013, which in addition foresees the case, under certain conditions, of an EGTC made up of members located in the territory of only one Member State.

Regarding the functional profile, following recent amendments introduced to Regulation 1082/2006, further analogies can be observed as regards the tasks that both Groupings can perform. EGTCs are no longer limited to the facilitation and promotion of territorial cooperation to strengthen economic, social and territorial cohesion and therefore to the implementation of territorial cooperation programmes co-financed by the EU. They can realize a wide range of activities, also in the context of EU policies other than the Cohesion Policy.

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<sup>64</sup> Compare Art. 1 of the Protocol and Art. 1 of the amended Regulation 1082/2006.



Definitively, both EGTCs and ECGs should be seen as complementary means which try to harmonize the legal framework provided by the CoE and the EU on territorial cooperation through structures generally defined as “Euroregions”. To this end, it is worth noting that Euroregions or similar structures do not mark the emergence of a new level of government in concurrence with the existing ones (local, regional and State)<sup>65</sup>, but rather represent a further step towards the reorganization of European decision-making processes induced by European integration. EGTCs and ECGs can thus be understood as a platform by which coordinating trans-national policies and as a means of both vertical and horizontal integration<sup>66</sup>.

## **6. Territorial cooperation and energy governance: the path towards a European Energy Union**

As outlined above, existing EGTCs essentially consist in the institutionalization of ongoing projects and programmes. They perform multiple tasks according to the powers exercised by their constituent entities and to the geographical scope of the established cooperation. Regarding the latter aspect, Groupings mostly have a local or regional coverage, although examples of cooperation including the State level exist as well. Moreover, it has been reported that many Groupings experienced or foresaw enlargements, while other small EGTCs will probably cease their activity or join other Groupings<sup>67</sup>.

Regarding energy, EGTCs offer interesting opportunities for the EU energy governance, since they allow territorial authorities (from local to State levels), as well as public and private actors, to discuss, draft and implement actions requiring the combining of different interests and concerns (economic, environmental and social). Since they provide for the optimal territorial extent by which dealing with issues transcending local, regional or even State borders, they could be efficiently used for the exploitation of renewable energy sources<sup>68</sup> and for facilitating the interconnection of energy networks, fields which are of paramount importance for present EU energy policy: renewable energy, together with energy savings and energy efficiency, is in fact seen as the most relevant mean by which reducing CO<sub>2</sub> emissions and granting a greater security

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<sup>65</sup> See F. MORATA – A. NOFERINI, *The Pyrenees-Mediterranean Euroregion functional networks actors perceptions and expectations*, in N. Bellini –U. Hilpert (eds.), *Europe's Changing Geography*, cit., pp. 171-172.

<sup>66</sup> See M. PERKMANN, *Euroregions: Institutional Entrepreneurship in the European Union*, in M. PERKMANN – N. SUM (eds.), *Globalization, Regionalization and Cross-Border Regions*, cit., p. 110 ss.

<sup>67</sup> See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *EGTC Monitoring Report 2014. Implementing the Strategy Europe 20120*, cit., pp. 99-113.

<sup>68</sup> See F. GUELLA, *op. cit.*, p. 49.

of energy supply, while the creation of a European energy market with affordable prices is not possible without an effective interconnection between national energy markets<sup>69</sup>.

If we pass from theory to practice, we can observe that many EGTCs are committed in favouring the sustainable growth of their territories through activities concerning energy and environment, despite their geographical scope, the number and nature of their constituent members and their legal nature<sup>70</sup>.

Some examples can help to clarify: “EGTC EFXINI POLI – Network of European Cities for Sustainable Development” is a Grouping made up by 20 Greek, Bulgarian and Cypriot municipalities and joined also by one Greek region (Attica), a Greek Institution (The Institute of Urban Environment and Human Capital Panteion University) and a Bulgarian regional agribusiness centre (Regional agribusiness centre-Vodin/RABC Vidin), aimed at proposing and implementing a sustainable development policy with special regard to waste management; “Territory of municipalities: Gorizia, Mestna občina Nova Gorica and Občina Šempeter-Vrtojba”, is an EGTC gathering up municipalities from Italy (Gorizia) and Slovenia (Mestna Občina Nova Gorica and Občina Šempeter-Vrtojba), is aimed at reinforcing territorial and social cohesion between its constituent units and encompasses within its tasks the exploitation and management of energy resources and local environmental and the development of a metropolitan energy plan; EGTC “Eurométropole Lille-Kortrijk-Tournai” is a type of multilevel governance Grouping with 4 levels (States, Regions, provincial level and Intermunicipal organisations), involving several French and Belgian sub-state authorities as well as the French and the Belgian States and is committed in promoting and supporting cross-border cooperation, according to the Europe 2020 strategy; “Parc Marin International des Bouches de Bonifacio – PMIBB”, finally, consists in an interesting example of EGTC mainly oriented in developing a common model for the use of renewable energies for the International Maritime Parc of Bonifacio (Sardinia) and its scientific basis (Corsica).

Many other are the examples of Groupings acting in the field of energy: it is sufficient here to point out how the role EGTCs can play in the energy field, as well as regarding other macro-territorial strategies, has been stressed following the amendments of 2013. Regulation 1302/2013, in fact, expressly states that EGTCs can be used for cooperation in the context of EU policies other than the Cohesion Policy, thus providing for a more efficient operation of macro-regional

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<sup>69</sup> See M. MARLETTA, *op. cit.*, pp. 59-62.

<sup>70</sup> For a complete overview of existing Groupings see EUROPEAN UNION – COMMITTEE OF THE REGIONS, *EGTC Monitoring Report 2014. Implementing the Strategy Europe 20120*, cit.



strategies<sup>71</sup>. They should also be used to manage public services with a particular focus on services of general economic interest or on infrastructure: to this regard, interesting potentialities are opened up regarding trans-European energy networks. Their scope could be extended to strategic planning and the management of regional and local issues in line with the Cohesion Policy and other Union policies, thus contributing to the Europe 2020 strategy for smart, sustainable and inclusive growth, especially regarding the flagship “Resource Efficient Europe” focusing on energy and waste management<sup>72</sup>, or to the implementation of macro-regional strategies. Moreover, their role in overcoming the internal market barriers, especially in the energy market, is emphasized. Finally, it is worth noting that the enlargement of the categories of actors that can be part of a Grouping encompasses now also “public undertakings” as defined in Directive 2004/17/EC, which coordinates the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

In the light of the attempt of the Juncker Commission to establish a resilient Energy Union with secure, sustainable, competitive and affordable energy, and with a view to the current international climate negotiations which will lead to a binding climate agreement by the end of 2015 in Paris, the above observations seem to gain momentum. For the Commission, in fact, the completion of an Energy Union implies a move away from fragmented and uncoordinated national policies, as well as from market barriers and energy-isolated areas, a goal which requires the commitment of national, regional and local levels. The Commission notices, in fact, that the state of the art of the present energy market is that of 28 national regulatory frameworks, with all its harmful consequences in terms of competition, market efficiency and affordable prices for consumers.

According to the Commission, sub-state actors play a first-order role in dealing with many energy-related issues, as heating and cooling, which represent the largest single source of energy demand in Europe, and renewable energy. To this end, actions by Member States, particularly at local and regional levels, are required to assure the energy efficiency of buildings: Smart Cities and Communities-initiatives as well as the Covenant of Mayors are thus relevant tools for achieving progress on energy efficiency in and outside the EU, as well as regarding renewable energy sources. Regarding the latter, it is worth noting that the EU is committed to becoming the

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<sup>71</sup> See S. P. ISAZA QUERINI, *op. cit.*, p. 21.

<sup>72</sup> See EUROPEAN UNION – COMMITTEE OF THE REGIONS, *EGTC Monitoring Report 2013. Towards the New Cohesion Policy*, cit., pp. 115-119.



world leader in the field, as well as the global hub for developing the future generation of technically advanced and competitive renewable energies.

Hence, the successful inception of an Energy Union, founded on energy security, an integrated energy market, energy efficiency, a decarbonizing economy and on research, innovation and competitiveness, relies on the commitment of all actors concerned, from EU institutions to Member States, from stakeholders to the regional and local levels, according to the principles of subsidiarity, proportionality and better regulation<sup>73</sup>.

## 7. Conclusions

EU energy policy faces today several challenges, having to respond to the need of economic and social development of roughly five hundred million of Europeans. As we have tried to outline in the previous pages, the energy policy of the European Union has been enriched by new dimensions and areas of policy intervention: the issues at stake are not only the establishment of a free and competitive energy market, but even more security of supply and sustainable development.

In accordance with the attempt of the International Community in assuring a development able to meet “*the needs of the present without compromising the ability of future generations to meet their own needs*”<sup>74</sup> and looking to the global climate negotiations which will hopefully lead to the adoption of the Paris Protocol by the end of 2015, EU energy policy appears thus to be as an instrument to boost economic growth, environmental protection and social development, that is to say a sustainable energy transition towards a decarbonized economy.

In Europe, as well as in the rest of the world, energy requires therefore an integrated approach, eager to grant the wider democratic involvement besides the classical channels of democratic participation.

The models of territorial cooperation which have emerged in Europe during the last sixty years represent an interesting opportunity for energy governance, since they allow to combine different issues (e.g. energy needs and environmental concerns) and to involve both public institutions (governments, authorities etc.) and private actors (representatives of the civil society and economic stakeholders) which act at different levels of government (local, regional, State and

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<sup>73</sup> See the Commission’s Communication “A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy” [COM(2015) 80 final].

<sup>74</sup> This is the definition of sustainable development provided in the Brundtland Report, also known as “Our Common Future”, elaborated on the occasion of the United Nations World Commission on Environment and Development of 1987.



European). Despite the concurrence of different legal systems (as those provided by the Council of Europe and the EU) and the existence of different institutionalized models of collaboration (such as ECGs and EGTCs), a certain degree of harmonization could be seen as far as European territorial cooperation is concerned, thanks to the instruments provided by both the CoE and the EU. Following the introduction of ECGs and EGTCs, in fact, territorial cooperation can now be understood as a means for inserting bottom-up initiatives within macro-regional and supra-State policies, thus combining a substantial degree of spontaneity with top-down interventions.

To this extent, the case of energy is emblematic of how territorial cooperation can be extended to manage policies others than the EU cohesion policy, which demand the participation of all levels of government and the involvement of a wide number of actors.

EGTCs, as well as ECGs, are very recent institutional innovations, whose future developments, especially after the amendments of 2013, are still unpredictable. Nonetheless, regarding sustainable energy, practice seems to confirm they are useful instruments of policy coordination and making: it is of no coincidence that the Committee of the Regions stresses the role of local and regional levels in drafting and implementing policies on climate change and developing renewables and energy efficiency, and the need of involving them in establishing a new energy governance able to meet the 2030 energy and climate framework. Needs which are expressly embraced within the scope of the future European Energy Union.